

Internal Revenue Service

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Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-124818-09

Date:

July 07, 2009

X =

State =

A =

B =

C =

D =

E =

Trust =

c =

D1 =

D2 =

D3 =

D4 =

Dear _____ :

This responds to a letter dated April 17, 2009, and supplemental correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State and elected to be an S corporation effective on D1. On D2, A an original shareholder of X died. On D3, A's estate transferred c shares of A to Trust, and the remainder of A's shares to B, C, and D. Because Trust was created under the terms of A's will, Trust was a permitted S corporation shareholder for the 2-year period beginning on D3. X represents that Trust is qualified as a subchapter S trust (QSST) described in § 1361(d)(1), except that E, the sole beneficiary of Trust, failed to make the election under § 1361(d)(2). Therefore, X's S corporation election terminated on D4.

X represents that Trust qualifies as a QSST under § 1361(d)(3). X further represents that the failure to file timely the QSST election for Trust was inadvertent and not motivated by tax avoidance. X further represents that X has filed returns consistent with X's status as an S corporation, and Trust as a QSST. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Under the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D4 and thereafter. This ruling is conditioned upon E, the sole

beneficiary of Trust, filing an appropriately completed QSST election for Trust, effective on D4. The QSST election for Trust must be filed within 60 days following the date of this letter and a copy of this letter should be attached to such election.

Therefore, we conclude that X will continue to be treated as an S corporation for the period beginning on D4, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is an S corporation for federal tax purposes; whether Trust is permitted as a shareholder of an S corporation under § 1361(c)(2); or whether Trust is a QSST under § 1361(d).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes